

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

OPTISTREAMS, INC.,	)	No. CV-F-05-117 REC/SMS
	)	
	)	ORDER DENYING PLAINTIFF'S
Plaintiff,	)	MOTION TO DISQUALIFY
	)	SAGASER, JONES & HAESY
vs.	)	
	)	
SEAN GAHAN, et al.,	)	
	)	
Defendant.	)	
	)	
	)	

On August 1, 2005, the court heard plaintiff Optistreams, Inc.'s motion to disqualify the law firm of Sagaser, Jones & Haesy from further representation of Sean Gahan in this litigation.

Upon due consideration of the record and the arguments of the parties, the court denies this motion for the reasons set forth herein.

On December 22, 2004, Optistreams, Inc., then represented by Jory, Peterson, Watkins, Ross & Woolman (hereinafter Jory, Peterson), filed a Complaint in the Fresno County Superior Court

1 against Sean Gahan and Does 1-26, alleging causes of action for  
2 defamation, breach of fiduciary duty, trespass to chattel,  
3 computer tampering in violation of California Penal Code § 502  
4 and 18 U.S.C. § 1030, and conversion. The action was removed to  
5 this court on January 25, 2005. Gahan is represented by Howard  
6 Sagaser and Melody Hawkins of Sagaser, Jones & Haesy  
7 (hereinafter referred to as Sagaser, Jones).

8 Optistreams has moved to disqualify Sagaser, Jones from  
9 continued representation of Gahan in this litigation on the  
10 ground that a conflict of interest has arisen because of Sagaser,  
11 Jones' hiring of legal secretary Dawn Peel, who was employed by  
12 Jory, Peterson from March 27, 2000 until June 2, 2005. Ms. Peel  
13 was legal secretary to Patti L. Williams, who was counsel of  
14 record for Optistreams in this litigation until July 26, 2005,  
15 when David Roberts and Brian Cuttone of Caswell, Bell & Hillison  
16 were substituted as counsel of record for Optistreams. While  
17 employed at Jory, Peterson, Ms. Peel also was legal secretary to  
18 Jason Parkin, counsel of record for Optistreams in ongoing  
19 litigation in state court. Optistreams contends that Ms. Peel  
20 has knowledge of confidential information regarding Optistreams  
21 and specific attorney-client communications regarding this  
22 litigation. Optistreams notes that Sagaser, Jones did not obtain  
23 a waiver of this conflict of interest from Optistreams prior to  
24 hiring Ms. Peel and contends that Sagaser, Jones did not erect an  
25 "ethical wall" prior to hiring Ms. Peel.

26 The standard for resolving a motion to disqualify a law firm

1 who hires a nonlawyer employee with a conflict of interest is set  
2 forth in In re Complex Asbestos Litigation, 232 Cal.App.3d 572,  
3 596 (1991):

4 Absent written consent, the proper rule and  
5 its application for disqualification based on  
6 nonlawyer employee conflicts of interest  
7 should be as follows. The party seeking  
8 disqualification must show that its present  
9 or past attorney's former employee possesses  
10 confidential attorney-client information  
11 materially related to the proceedings before  
12 the court. The party should not be required  
13 to disclose the actual information contended  
14 to be confidential. However, the court  
15 should be provided with the nature of the  
16 information and its material relationship to  
17 the proceeding ....

18 Once this showing has been made, a rebuttable  
19 presumption arises that the information has  
20 been used or disclosed in the current  
21 employment. The presumption is a rule of  
22 necessity because the party seeking  
23 disqualification will be at a loss to prove  
24 what is known by the adversary's attorneys  
25 and legal staff ... To rebut the presumption,  
26 the challenged attorney has the burden of  
showing that the practical effect of formal  
screening has been achieved. The showing  
must satisfy the trial court that the  
employee has not and will not have any  
involvement with the litigation, or any  
communication with attorneys or coemployees  
concerning the litigation, that would support  
a reasonable inference that the information  
has been used or disclosed. If the  
challenged attorney fails to make this  
showing, then the court may disqualify the  
attorney and law firm.

27 The Court of Appeal also stated:

28 The most likely means of rebutting the  
29 presumption is to implement a procedure,  
30 before the employee is hired, which  
31 effectively screens the employee from any  
32 involvement in the litigation, a procedure  
33 one court aptly described as a "cone of

1        silence''' ... Whether a potential will  
2        require a cone of silence should be  
3        determined as a matter of routine during the  
4        hiring process. It is reasonable to ask  
5        potential employees about the nature of their  
6        prior legal work: prudence alone would  
7        dictate such inquiries ....

8        The leading treatise on legal malpractice  
9        also discusses screening procedures and case  
10       law. (1 *Mallen & Smith, Legal Malpractice*  
11       (3<sup>rd</sup> Ed. 1989) §§ 13.18-13.19, pp. 792-797.)  
12       We find several points to be persuasive when  
13       adapted to the context of employee conflicts.  
14       'Screening is a prophylactic, affirmative  
15       measure to avoid both the reality and  
16       appearance of impropriety. It is a means,  
17       but not *the* means, of rebutting the  
18       presumption of shared confidences.' ... Two  
19       objectives must be achieved. First,  
20       screening should be implemented before  
21       undertaking the challenged representation or  
22       hiring the tainted individual. Screening  
23       must take place at the outset to prevent any  
24       confidences from being disclosed. Second,  
25       the tainted individual should be precluded  
26       from any involvement in or communication  
27       about the challenged representation. To  
28       avoid inadvertent disclosures and to  
29       establish an evidentiary record, a memorandum  
30       should be circulated warning the legal staff  
31       to isolate the individual from communications  
32       on the matter and to prevent access to the  
33       relevant files ....

34       The need for such a rule is manifest. We  
35       agree with the observations made by the  
36       *Williams* court: '[Nonlawyer] personnel are  
37       widely used by lawyers to assist in rendering  
38       legal services. Paralegals, investigators,  
39       and secretaries must have ready access to  
40       client confidences in order to assist their  
41       attorney employers. If information provided  
42       by a client in confidence to an attorney for  
43       the purpose of obtaining legal advice could  
44       be used against the client because a member  
45       of the attorney's [nonlawyer] support staff  
46       left the attorney's employment, it would have  
47       a devastating effect both on the free flow of  
48       information between client and attorney and  
49       on the cost and quality of the legal services

1 rendered by the attorney.' ... Further, no  
2 regulatory or ethical rules comparable to  
3 those governing attorneys, restrain all of  
4 the many types of nonlawyer employees of  
5 attorneys. The restraint on such employees'  
disclosing confidential attorney-client  
information must be the employing attorney's  
admonishment against revealing the  
information.

6 232 Cal.App.3d at 593-594.

7 A. Possession of Confidential Information Materially  
8 Related to the Proceeding Before the Court.

9 Optistreams contends that Ms. Peel possesses confidential  
10 information materially related to this action.

11 In so asserting, Optistreams relies on the Declaration of  
12 Patti Williams, a shareholder in Jory, Peterson, who avers that  
13 Ms. Peel was employed by Jory, Peterson as a legal secretary from  
14 March 27, 2000 and that Ms. Peel was her secretary during the  
15 entire time of her employment with Jory, Peterson. Ms. Williams  
16 avers that, since October 2003, Jory, Peterson has employed two  
17 legal secretaries, Ms. Peel and Beth Noel; that the two  
18 secretaries shared a common work area, are close friends, and  
19 often helped each other out. Ms. Neal is Mr. Woolman's secretary  
20 and Mr. Woolman has been the lead attorney on several cases  
21 involving Optistreams, including a case against several former  
22 employees who formed a competing company, Optistreams v. NIA, a  
23 case currently pending in the Fresno County Superior Court. Mr.  
24 Parkin is an associate attorney with Jory, Peterson who has been  
25 assigned to work on the Optistreams v. NIA case. Ms. Peel was  
26 Mr. Parkins legal secretary from October 2004 and has assisted

1 him in the Optistreams v. NIA case. Ms. Williams further avers  
2 that Jory, Peterson has handled several other litigation matters  
3 for Optistreams and has advised Optistreams regarding various  
4 employment matters. Ms. Williams avers that she was the attorney  
5 at Jory, Peterson primarily responsible for handling the instant  
6 case and the attorney primarily responsible for handling an  
7 arbitration involving Tony Coles, a former employee of  
8 Optistreams. Ms. Williams frequently advised Optistreams on  
9 various employment matters and represented Optistreams before the  
10 California Labor Commissioner. Ms. Williams avers that Ms. Peel  
11 assisted her in each of these matters. Ms. Williams further  
12 avers in pertinent part:

13 8. Jory, Peterson maintains its client files  
14 in a file room. Litigation files consist of  
15 separate files for correspondence, client  
16 documents, attorney notes, legal memoranda,  
17 discovery documents, and pleadings. All  
employees of the firm have access to the  
files. Ms. Peel had access to all files in  
the file room, including all files relating  
to Optistreams.

18 9. Jory, Peterson has a policy with regard  
19 to how incoming facsimile messages are  
20 handled. The facsimiles are first taken to  
21 the firm's secretaries. The secretaries are  
22 required to read the facsimile messages in  
23 order to determine whether there are any  
24 dates to be calendared, and to check for any  
25 issues of immediate concern. The secretaries  
26 then give the facsimile messages to the  
attorneys. Therefore, under this policy, Ms.  
Peel was responsible for reviewing every  
facsimile message directed to me, including  
attorney-client communications. I am certain  
that Ms. Peel has reviewed attorney-client  
facsimile communications from Optistreams to  
me and have specific recollections of Ms.  
Peel giving me such communications.

1           10. Jory, Peterson has a policy with regard  
2           to how incoming mail is handled. The mail  
3           for each attorney first goes to the  
4           secretaries. The secretaries are required to  
5           review the mail and read any correspondence  
6           to determine whether there are any dates to  
7           be calendared and to check for any issues of  
8           immediate concern. The secretaries then  
9           provide the mail to the attorneys.  
          Therefore, under this policy, Ms. Peel is  
          responsible for reviewing all correspondence  
          sent to me, including attorney-client  
          communications. I am certain that Ms. Peel  
          has reviewed attorney-client communications  
          from Optistreams to me and have specific  
          recollections of Ms. Peel giving me such  
          communications.

10           11. Jory, Peterson utilizes a computerized  
11           network in order to organize all documents  
12           created within the firm. I know this because  
13           each firm employee, including attorneys and  
14           secretaries, has access to documents within  
15           the network. Access does not depend upon  
          whether a particular attorney or secretary is  
          working on a particular matter. During her  
          employment with Jory, Peterson, Ms. Peel had  
          access to and did in fact access confidential  
          computerized records relating to this matter.

16           12. Jory, Peterson utilizes a software  
17           system entitled 'Worldox' in order to index  
18           and manage documents created on the firm  
19           network. I am familiar with this system and  
20           have utilized it on a daily basis since the  
21           firm installed it. Under this system, each  
22           document is assigned a number. The document  
23           may then be accessed by all users of the  
24           system using the document number or other  
25           information such as the client number,  
26           author, type of document, key terms, and so  
          forth. It is possible to run an 'audit  
          trail' on documents within the Worldox system  
          to determine which individuals have accessed,  
          opened, copied or printed any particular  
          document. On June 2, 2005 and June 8, 2005,  
          I performed an audit trail of confidential  
          attorney-client communications, consisting of  
          letters from William Woolman, my partner,  
          Shelley Bryant, my partner, and me, to  
          Optistreams. Attached as collective Exhibit

1 A are the documents generated by this  
2 document trail as to four documents within  
3 the firm's computer system. I personally  
4 printed these documents once I completed  
5 running the audit trails. Three of the four  
6 documents pertain to the present matter -  
7 Optistreams v. Gahan. The fourth document  
8 pertains to Optistreams v. NIA.

9 In paragraphs 13-14 of her declaration, Ms. Williams avers that  
10 the audit trail demonstrates that Ms. Peel viewed documents  
11 containing attorney-client information in February and March,  
12 2004. In paragraph 15, Ms. Williams avers:

13 15. The third page of Exhibit A pertains to  
14 document 537566. I prepared this document  
15 and therefore, am familiar with its contents.  
16 Document number 537566 is a letter dated  
17 March 23, 2005 from me to Ms. Alison Haugan  
18 and Mr. Steve Genuser of Optistreams. In  
19 this letter, I discuss the status of the case  
20 against Mr. Gahan, including my theories,  
21 impressions and plans regarding the case.  
22 This letter contains highly confidential  
23 attorney-client communications. The audit  
24 profile regarding this letter shows that Ms.  
25 Peel opened the letter on May 23, 2005, which  
26 was approximately one week after she gave  
notice of her intention to join Mr. Sagaser's  
firm.

18 Sagaser, Jones argue that Ms. Williams' declaration and  
19 supporting exhibits do not establish that Ms. Peel possessed  
20 confidential information materially related to the instant case.  
21 In so asserting, Sagaser, Jones relies on the Ms. Peel's  
22 declaration, wherein she avers in pertinent part:

23 3. ... I have no recollection of reviewing,  
24 copying or printing the documents Ms.  
25 Williams has listed in paragraphs 13 and 14  
26 of her declaration. However, it was routine  
practice for the legal secretaries,  
paralegals and attorneys at Jory, Peterson to  
open documents for the specific purpose of



1 copying all or part of the documents  
2 including the names and addresses of clients  
3 or other addresses. It was common practice  
4 for the legal secretaries to open previously  
5 prepared pleadings and correspondence in  
6 order to copy names and addresses from the  
7 letters and proofs of service.

8 4. Although I do not specifically recall  
9 opening the particular documents referred to  
10 in Ms. Williams' declaration on the dates  
11 listed, I may have opened those documents for  
12 the specific purpose of obtaining the correct  
13 address for Mr. Genuser. When I opened  
14 documents for the purpose of copying names  
15 and addresses, I did not review the documents  
16 but only copied the name and address and  
17 closed the document. I have no recollection  
18 of the content of those documents.

19 5. As to Ms. Williams' statement in  
20 paragraph 15, I do not have a specific  
21 recollection of opening the letter to Ms.  
22 Haugen and Mr. Genuser on May 23, 2005.  
23 However, Ms. Williams did instruct me to fax  
24 and mail a letter to Howard Sagaser regarding  
25 this case on May 23, 2005. In keeping with  
26 Jory, Peterson's practice, I would have sent  
a copy of Ms. Williams' May 23, 2005 letter  
to Mr. Sagaser to Optistreams and I may have  
opened Ms. Williams' letter to Ms. Haugen and  
Mr. Genuser to copy their names and addresses  
for the envelope to mail the letter. If I  
did open the letter to Mr. Haugen and Mr.  
Genuser, I did not read the letter nor do I  
have any recollection of its contents.

6. Additionally, it is possible someone else  
at Jory, Peterson could have opened the  
documents from my computer. The legal  
secretaries sit in a large open area with no  
partitions and no doors. The secretaries'  
computers are readily accessible to anyone in  
the firm. Generally, when I would come to  
work at Jory, Peterson I would sign onto my  
computer using my initials 'DEP' and I would  
leave it running all day. I would also open  
the windows for Word and Wordox and leave  
them open all day. Since my computer was  
already on and I was logged in, anyone could  
have used my computer to access, review, copy

1 or print documents on my computer and it  
2 would show up on the audit trail as if I had  
3 accessed, reviewed copied or reviewed [sic]  
4 the document. Oftentimes I was not at my  
5 desk, as I would go in the file room to  
6 retrieve files or use the copier and during  
7 the lunch hour I would generally go out of  
8 the office for lunch.

9 7. Regarding Jory, Peterson's policy  
10 regarding incoming faxes and mail, while it  
11 was my responsibility to review the faxes and  
12 the mail to check for dates to be calendared  
13 and issues that had to be addressed  
14 immediately, my review of the incoming  
15 documents was only cursory to review for  
16 dates or immediate issues; I did not review  
17 the documents for content, particularly since  
18 I had to review incoming documents for four  
19 attorneys.

20 8. Similarly, when I was asked to proof  
21 outgoing letters or pleadings that were  
22 prepared by an attorney, I did not review for  
23 content, but merely reviewed the documents  
24 for grammatical errors and misspellings.  
25 Likewise, when I typed letters and pleadings,  
26 I did not edit the document or analyze its  
content.

1 9. At the time I resigned my employment as a  
2 legal secretary at Jory, Peterson I was  
3 working for four attorneys, three of whom  
4 were partners. I rarely, if ever, had the  
5 occasion to know a case on an intimate basis.  
6 Neither Patti Williams nor Jason Parkin ever  
7 informed or discussed with me their  
8 litigation strategy in any of the Optistreams  
9 cases. At no time was my opinion asked as to  
10 the current strategy in any Optistreams case,  
11 nor did I have any information pertaining to  
12 any future strategy in any Optistreams case.  
13 I also have no recollection or knowledge of  
14 trade secrets or confidential information  
15 pertaining to Optistreams or any of the  
16 Optistreams cases. My involvement with  
17 Optistreams and its cases was limited to  
18 typing letters and pleadings, mailing and  
19 filing pleadings and mailing correspondence.

20 In reply, Optistreams submits a further declaration from Ms.

1 Williams in which she avers in pertinent part:

2           7. ... It is true that attorneys at Jory,  
3           Peterson do not typically consult  
4           administrative assistants such as Ms. Peel  
5           regarding their opinions as to case strategy;  
6           however, Ms. Peel was well aware of the  
7           attorneys' opinions, impressions and strategy  
8           regarding the Optistreams cases. I know this  
9           because my partners William Woolman, Shelley  
10          Bryant and I drafted letters to Optistreams  
11          in which we expressed our opinions regarding  
12          the case, our strategies and how we felt  
13          about certain claims. Jory, Peterson's  
14          computer audit trail shows that Ms. Peel  
15          accessed each of these letters. Also, Ms.  
16          Peel's job duties required her to review,  
17          correct and format correspondence prepared by  
18          me and attorney Jason Parkin. Ms. Peel was  
19          required to proofread our letters for  
20          content, syntax and grammar. It is  
21          inevitable that when Ms. Peel reviewed, these  
22          letters [sic] in accordance with her job  
23          duties, Ms. Peel would have become familiar  
24          with the content of these letters and learned  
25          our future strategies as well as our opinions  
26          regarding the merits of the claims at issue  
          in this case.

          Optistreams has shown that Ms. Peel possesses confidential  
information materially related to this action. Ms. Peel  
actually read the letters prepared by Optistreams' attorneys and  
accessed files and documents relevant to this litigation. That  
Ms. Peel says she does not remember the content is of no moment  
because these actions all happened very recently and the letters  
involved the instant litigation. Her assertion that someone else  
could have used her computer to access the documents is pure  
speculation, especially in the absence of any averment that it  
was a common practice for others at Jory, Peterson to use her  
computer for this purpose.

1           Consequently, the court concludes that Optistreams has made  
2 a sufficient showing to invoke the rebuttable presumption that  
3 confidential information regarding this case has been used by or  
4 disclosed to Sagaser, Jones. Therefore, the burden shifts to  
5 Sagaser, Jones to rebut the presumption.

6           B. Formal Screening.

7           Sagaser, Jones argues that they have rebutted the  
8 presumption.

9           In so asserting, when Ms. Williams wrote to Mr. Sagaser by  
10 letter dated May 23, 2005 requesting that Sagaser, Jones recuse  
11 itself from the instant litigation because Ms. Peel had been  
12 hired by Sagaser, Jones, Mr. Sagaser responded by letter to Ms.  
13 Williams dated May 24, 2005:

14           I am in receipt of your letter dated May 23,  
15 2005, in which you request this office to  
16 voluntarily recuse itself from representing  
17 Sean Gahan in the litigation Optistreams had  
18 initiated against Mr. Gahan. By this letter,  
19 I wish to inform you that Dawn Peel contacted  
20 our office about possible employment. Our  
21 office did not initiate the contact.  
22 Moreover, Ms. Peel is scheduled to work for  
attorneys who have had no involvement in the  
*Optistreams v. Gahan* litigation. Our office  
will be constructing a privacy wall around  
Ms. Peel and she will not be allowed to work  
on the *Optistreams v. Gahan* matter, even  
though she was not an attorney or paralegal  
in your office and will not be an attorney or  
paralegal in our office.

23 Mr. Sagaser sent a letter to Ms. Peel dated May 24, 2005, in  
24 which he stated:

25           Recently, Patti Williams has objected to our  
26 firm representing Sean Gahan with respect to  
a lawsuit that was filed by Optistreams

1           against Mr. Gahan. I am the attorney who is  
2           representing Sean Gahan, and Patti Williams  
3           and Jason Parkin have been representing  
4           Optistreams in the litigation. By this  
5           letter, I wish to inform you that prior to or  
6           upon your employment with our firm on June 6,  
7           2005, you are not to divulge to anyone in our  
8           firm any information regarding Optistreams,  
9           much less anything involving the case filed  
10          by Optistreams against Sean Gahan. At no  
11          time are you to access the *Optistreams v.*  
12          *Sean Gahan* file in our office and no attorney  
13          who you are assigned to work for will be  
14          allowed to work on the file. This is  
15          commonly known as a 'privacy wall.'

16          Presently, the only active litigation of  
17          which I am aware involving Jory, Peterson ...  
18          and our firm is the *Optistreams v. Gahan*  
19          matter. However, if you are aware of any  
20          other matters in which the two firms are  
21          opposing counsel, I would appreciate your  
22          bringing it to my attention so I can insure  
23          that the proper privacy wall and security  
24          arrangements are in place.

25          If you have any question concerning any of  
26          the issues set forth in this letter, please  
27          feel free to give me a call.

28          Mr. Sagaser's letter to Ms. Peel was copied to Ms. Williams and  
29          Mr. Woolman. Mr. Sagaser further avers in his declaration in  
30          opposition to this motion:

31               15. Sometime in May, 2005, Dawn Peel  
32               contacted one of the attorneys in our office  
33               for whom she used to work, Michael Helsley.  
34               Ms. Peel inquired about the possibility of  
35               employment at our firm. In response to Ms.  
36               Peel's inquiry, our firm extended an offer  
37               for her to come to work for our firm as the  
38               legal secretary for Michael Helsley and K.  
39               Pancho Baker. Neither Mr. Baker nor Mr.  
40               Helsley has been involved in the Gahan v.  
41               Optistreams [sic] litigation, nor has this  
42               case been the subject of discussion at any  
43               attorney meetings. Sometime in May of 2005,  
44               it was agreed between Mr. Helsley and Ms.  
45               Peel that she would start employment at our

1 firm on June 6, 2005. The only individuals  
2 involved in hiring Peel were Mr. Helsley, Mr.  
3 Baker, and the Sagaser Firm Administrator  
Lynn Hoffman. I was not involved in the  
hiring of Dawn Peel.

4 ...

5 19. Prior to Ms. Peel starting her  
6 employment at our office, we had our computer  
7 system modified to block her from any access  
8 to the Optistreams v. Gahan computer files.  
9 Only those attorneys who are actively working  
10 on the Optistreams case and their legal  
11 assistants are allowed access to the computer  
files for the Optistreams v. Gahan  
litigation. As stated previously, the  
attorneys for whom Ms. Peel works at our firm  
have never and do not currently work on the  
Optistreams case and are not allowed to work  
on the Optistreams case.

12 20. Additionally, the Optistreams v. Gahan  
13 files have been removed from our central file  
14 room and are kept in a separate room that is  
15 locked and only attorney Melody Hawkins, my  
16 law clerk Tracie Goodwin, paralegal Gina  
Klein, my secretary Elaine Devlin and me, and  
our file room personnel who have access to  
the files.

17 Mr. Sagaser further avers that he sent an e-mail to everyone at  
18 Sagaser, Jones on June 2, 2005, which e-mail states:

19 Re: Issues Concerning Optistreams v. Gahan -  
6489-002

20 As everyone is aware, Dawn Peel will be  
21 joining our firm on June 6, 2005. The  
22 attorneys for Optistreams, which are  
23 represented by the law firm where Dawn is  
24 currently working are objecting to my  
continued representation of Sean Gahan.  
Enclosed please find a copy of the letter  
that I sent Dawn Peel on May 24, 2005. I  
wanted to make certain that everyone was  
aware of this situation as we have  
constructed a privacy wall and under no  
circumstances is anyone to discuss the  
*Optistreams, Inc. v. Sean Gahan* matter with

1 Dawn Peel. Presently the only two attorneys  
2 who have worked on this matter are myself and  
3 Melody. Enclosed please find a copy of the  
4 letter that I received today informing me  
5 that Optistreams intends to file a motion to  
6 disqualify this firm. Therefore, it is  
essential that everyone abide by the privacy  
wall that we are constructing and your  
assistance in insuring that no one discusses  
the *Optistreams v. Gahan* matter with Dawn  
Peel is mandated.

7 If anyone has any questions, please feel free  
8 to give me a call.

9 Ms. Peel also avers in pertinent part:

10 10. When I resigned my employment at Jory,  
11 Peterson, I spoke to Ms. Williams about  
12 Optistreams. She stated that I should no  
13 longer work on the OptiStreams v. Gahan  
14 matter. In response, I informed her that I  
15 no longer wanted to work on any OptiStreams  
16 matter, including the OptiStreams v. NIA  
case. She agreed. From that point forward,  
if a file clerk or receptionist handed me any  
mail or faxes on any OptiStream matter,  
without reading it, I would immediately hand  
the document to the other secretary in the  
office, Beth Noel, and she would handle it.

17 11. After I had given my notice to resign  
18 and after Ms. Williams had agreed that I  
19 should not work on any OptiStreams cases, on  
20 May 23, 2005, she handed me a letter to Mr.  
21 Sagaser dated May 23, 2005 regarding this  
22 case. It was already prepared in final form.  
She asked me to fax it to Mr. Sagaser's  
office. Ms. Williams told me that I would be  
unhappy with the content of the letter, but I  
needed to fax it to him anyway, as it was  
'nothing personal' against me.

23 12. There was another occasion after May 23,  
24 2005, when Ms. Williams asked me to fax a  
25 document in the OptiStreams v. Gahan matter,  
26 as the other secretary was not in the office  
that day. I refused to do so, and asked her  
to give it to the paralegal, Lela Mulligan,  
to handle. It should be noted that faxing  
documents from Jory, Peterson's fax machine

1 is relatively simple. It is not clear why  
2 Ms. Williams asked me to fax the document  
3 when she had previously told me I was not to  
work on the OptiStreams v. Gahan case.

4 13. To my knowledge, Jory, Peterson did not  
5 put up a 'firewall' after I gave my notice.  
6 To my knowledge, the OptiStreams' files were  
7 not removed from the general filing area and  
8 they did not put a block on my computer  
9 access. Jory, Peterson informed one of the  
many receptionists not to give me mail or  
10 faxes pertaining to OptiStreams v. Gahan, but  
the others continued to do so. I would not  
11 review any mail or faxes pertaining to any  
Optistreams matter that were given to me, but  
12 would immediately hand them to the other  
13 secretary without reviewing or reading them.

14 ...

15 17. Since my employment at Sagaser, Jones  
16 ..., I have had no contact whatsoever with  
17 any matter pertaining to OptiStreams, other  
18 than having to respond to the allegations set  
19 forth in the declarations of Jason Parkin and  
20 Patti Williams in this case.

21 Optistreams argues that Sagaser, Jones has not rebutted the  
22 presumption because Sagaser, Jones did not institute the "privacy  
23 wall" prior to or during Ms. Peel's initial interview for  
24 employment. Optistreams contends that Sagaser, Jones knew or  
25 should have known that Ms. Peel's duties at Jory, Peterson  
26 included being legal secretary to one of the attorneys  
representing Optistreams in Optistreams v. Gahan.

27 However, the record in this matter establishes that the  
28 attorneys at Sagaser, Jones approached by Ms. Peel for employment  
29 and who interviewed her had and have no involvement in  
30 Optistreams v. Gahan. Mr. Sagaser had no involvement in the  
31 decision to hire Ms. Peel. The better practice would have been



1 for Mr. Helsley, Mr. Baker, Ms. Hoffman to ascertain from Ms.  
2 Peel at the time of her interview by them whether she had  
3 performed any secretarial tasks for attorneys at Jory, Peterson  
4 on cases in which attorneys for Sagaser, Jones were opposing  
5 counsel. However, under the circumstances before the court, the  
6 failure to make this inquiry does not negate the effectiveness of  
7 the steps taken by Sagaser, Jones to erect the privacy wall  
8 before Ms. Peel ceased working for Jory, Peterson and commenced  
9 working for Sagaser, Jones. The showing made by Sagaser, Jones  
10 demonstrates to the court's satisfaction that Ms. Peel has not  
11 and will not have any involvement with this litigation while  
12 employed at Sagaser, Jones, or any communication with attorneys  
13 or coemployees at Sagaser, Jones concerning this litigation that  
14 would support an inference that the confidential information has  
15 been used or disclosed. The record establishes that Mr. Sagaser  
16 took immediate steps to prevent disclosure to Sagaser, Jones of  
17 confidential information by Ms. Peel by warning Ms. Peel in  
18 writing that she must not do so, preventing her from obtaining  
19 access to any information at Sagaser, Jones concerning the case,  
20 and specifically advising all of the members and employees of  
21 Sagaser, Jones before Ms. Peel began work there that none of them  
22 must discuss in any way this case with Ms. Peel. The record also  
23 establishes that Ms. Peel was not hired to assist in this  
24 litigation and that she was hired to assist other lawyers in the  
25 firm who have not had and do not have any involvement in this  
26 litigation.

1           ACCORDINGLY, plaintiff's motion to disqualify Sagaser, Jones  
2 & Haesy is denied.

3           IT IS SO ORDERED.

4   **Dated: August 8, 2005**  
668554

**/s/ Robert E. Coyle**  
UNITED STATES DISTRICT JUDGE